1991

Board of Equalization of Salt Lake County, State of Utah v. Utah State Tax Commission, Thomas E and Mary Lu Judd : Brief of Appellee

Utah Supreme Court

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IN THE UTAH SUPREME COURT

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BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Petitioner and Appellant, vs. UTAH STATE TAX COMMISSION, EX REL. THOMAS E. AND MARY LU JUDD, Respondents and Appellees.	Case No. 91-0256 Priority 15 Petition For Review of the Decision of the Utah State Tax Commission Dated May 8, 1991, R.H. Hansen, Chairman

* * * * * * * *

BRIEF OF RESPONDENTS JUDD

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JURISDICTION

This Court has jurisdiction of this matter pursuant to Utah Code Ann. § 63-46b-16 and § 78-2-2(3)(e)(ii).

ISSUES PRESENTED FOR REVIEW

1. Was the Commission's decision that the usage of the Subject Property qualified that property for greenbelt assessment rational and reasonable?

2. Can a decision regarding taxation of property, based on its usage, for one tax year be res judicata as to the taxability of that property in a subsequent year?

DETERMINATIVE STATUTES

Respondents Judd submit that the following statutes are determinative of the issues presented by this appeal:

Utah Code Ann. § 59-2-503:

> (1) For general property tax purposes, the value of land under this part is the value which the land has for agricultural use if the land:
>
> (a) is not less than five contiguous acres in area, except where devoted to agricultural use in conjunction with other eligible acreage or as provided under Subsection (3);
>
> (b) has a gross income from agricultural use, not including rental income, of at least $1000 per year;
>
> (c) is actively devoted to agricultural use; and

(d) has been devoted to agricultural use for at least two successive years immediately preceding the tax year in issue.

(2) Land which (a) is subject to the privilege tax imposed by Section 59-4-101, (b) is owned by the state or any of its political subdivisions, and (c) meets the requirements of Subsection (1), is eligible for assessment based on its agricultural value.

(3) The commission may grant a waiver of the acreage limitation, upon appeal by the owner and submission of proof that 80% or more of the owner's, purchaser's, or lessee's income is derived from agricultural products produced on the property in question.

(4) (a) The commission may grant a waiver of the income limitation for the tax year in issue, upon appeal by the owner and submission of proof that the land was valued on the basis of agricultural use for at least two years immediately preceding that tax year, and that the failure to meet the income requirements for that tax year was due to no fault or act of the owner, purchaser, or lessee.

(b) As used in this section, "fault" does not include the intentional planting of crops or trees which, because of the maturation period, do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the income requirement.

Utah Code Ann. § 63-46b-15(4):

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is

based, is unconstitutional on its face or as applied;

(b) the agency has acted beyond the jurisdiction conferred by any statute;

(c) the agency has not decided all of the issues requiring resolution;

(d) the agency has erroneously interpreted or applied the law;

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

(h) the agency action is:

(i) an abuse of the discretion delegated to the agency by statute;

(ii) contrary to a rule of the agency;

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

(iv) otherwise arbitrary or capricious.

STATEMENT OF THE CASE

The Salt Lake County Board of Equalization ("Board") has sought review by this Court of the ruling of the Utah State Tax Commission ("Commission"), granting Respondents Judd's Application for greenbelt assessment of certain real property under the Farmland Assessment Act ("FAA"), Utah Code Ann. §§ 59-2-501, et seq., for the tax year 1989. The Commission entered a final Decision and Order on May 8, 1991, after a formal hearing, holding that the Judds' property qualified for FAA assessment in 1989. The Board filed a petition for review of the Commission's decision, pursuant to Utah Code Ann. § 63-46b-16, on May 31, 1991.

STATEMENT OF FACTS

1. The Judds have owned certain real property in Salt Lake County for many years (the "Original Property"). In 1976, the Judds applied for "greenbelt" assessment of the Original Property under the FAA. R.31, ¶ 1.

2. The County Assessor accepted the Judds' petition, on the grounds that the Original Property qualified for FAA assessment. Thereafter, that property, at all times, has been assessed as greenbelt property under the provisions of the FAA. R.31, ¶ 1.

3. In December, 1980, the Judds agreed to sell a portion of the Original Property (the "Subdivision Property") to Jim Pappas, who intended to develop a subdivision on the property. Mr. Pappas recorded a subdivision plat for the Subdivision Property with the Salt Lake County Recorder in 1983. R.31, ¶¶ 2,4.

4. In connection with the Pappas transaction, all of the Subdivision Property was conveyed to McGhie Land Title Company while initial steps in the development process took place. R.31, ¶ 5. However, as part of the consideration for the Judds' sale to Mr. Pappas, the Judds retained beneficial ownership of a portion of the Subdivision Property. Id., ¶ 3. Therefore, that portion of the Subdivision Property designated by Mr. Pappas as "Lots 1 through 16" was ultimately reconveyed to the Judds, with curb and gutter, sewer and utility hookups, all added at Mr. Pappas' expense. Id., ¶¶ 3,4,8. A plat map showing both the Original Property and the Subdivision Property is attached hereto as Appendix 2.

5. In 1985, the Salt Lake County Assessor determined that Lots 1 through 16 (then owned in their entirety by the Judds) did not qualify for greenbelt assessment. R.31, ¶ 8; R.21. The Board now contends that this determination was made because of the recording of the subdivision plat map and the minor improvements that had been made pursuant to the Judds'

agreement with Mr. Pappas. R.31, ¶ 8. However, the Judds' position is that the determination in 1985 was solely due to the Assessor's position that Lots 1 through 16 were "not in agricultural use." R.21. In any event, the Judds were then subjected to a rollback tax for those lots for the year 1985.

6. The Judds appealed the County Assessor's decision to withdraw Lots 1 through 16 from FAA assessment for the tax year 1985 to the Commission and, ultimately, to the Tax Division of the Third Judicial District Court for Salt Lake County. Judge David Young rendered a decision in 1990 (Civil No. 87-3472), holding that the Judds had failed to establish that Lots 1 through 16 were qualified for greenbelt assessment for the tax year 1985. R.33, ¶¶ 9,10; R.16, ¶ 6.

7. The Judds subsequently transferred ownership of Lots 1, 2, 3 and 16 to third parties, and those lots are not at issue in this appeal. R.53, ¶ 2. In 1989, Lots 4 through 15 were assessed as a subdivision. Petitioner's Brief at 9, ¶ 14. The Judds appealed that assessment and requested FAA assessment of Lots 4 through 15 (the "Subject Property"), which are immediately adjacent to the remainder of the Original Property. Id., ¶ 15; Appendix 2.

8. No physical barriers separate the Subject Property from the remainder of the Original Property. The only "division"

exists by virtue of a line on the recorded plat map. Indeed, the Judd Farm, consisting of both the remainder of the Original Property and the Subject Property, was fenced as one contiguous parcel between 1987 and 1989.[1] R.22; R.15, ¶ 5.

9. In 1987, the entire Judd Farm, including both the Original Property and the Subject Property, was leased to Stanley Diamond, who grew wheat on the combined property. R.15, ¶ 6.

10. Bateman Farms replaced Diamond as the property lessee in 1987, after the harvest. Bateman Farms cultivated the land and then placed it in a crop-land retirement program administered by the United States Department of Agriculture, for the 1988 crop year. During the fall of 1988, Bateman Farms again planted wheat on the property, which was harvested during the summer of 1989. Subsequently, Bateman Farms again placed the combined property in the federal crop land retirement program, for the year 1990. R.15, ¶ 6.

11. Thus, for the years 1987 through 1989, the Original Property and the Subject Property were operated as a single unit, and were subject to agricultural uses, all of which are recognized under the FAA. R.15, ¶¶ 5,6; R.22; R.33, ¶ 12.

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1 The Board's repeated use of the phrase "improved building lots" with respect to the Subject Property is both self-serving and misleading. There is no evidence, nor any contention, that any buildings have ever been constructed on the Subject Property.

12. The area of the Subject Property, by itself, constitutes less than five acres. However, the area of the entire Judd Farm, which is operated as a single unit, is in excess of twenty acres. R.15, ¶¶ 3,4; Petitioner's Brief at 25.

13. The annual agricultural income from the combined Judd Farm property exceeded $1,000 for each year during 1987-89. R.15, ¶ 5; Petitioner's Brief at 8-9, ¶¶ 11-13.

14. The Board never has contended that the Original Property, or the remainder of the Original Property, is not properly assessed under the provisions of the FAA. R.33, ¶ 12.

SUMMARY OF ARGUMENT

The Commission's decision, finding that the Judd Farm is subject to greenbelt assessment under the FAA, in its entirety, involved mixed questions of law and fact. Pursuant to Utah Code Ann. § 63-46b-16(4)(d), and Utah common law, review of such questions is based upon a standard of reasonableness and rationality. In addition, agency expertise, particularly in connection with matters, such as taxation, deemed peculiarly within the agency's realm of competence, are accorded a great deal of deference.

Thus, agency decisions reviewable by this Court pursuant to Utah Code Ann. § 63-46b-16, come cloaked within a fairly high degree of legitimacy, particularly where the decisions

involve resolution of mixed questions of law and fact. The applicability of the FAA to the property at issue in this case presents just such questions. Therefore, it is up to the Board, as the appellant, to convince this Court that the Commission's decision was beyond the realm of reasonableness. That, the Board has not even attempted to do, instead, relying heavily on the concept of res judicata.

However, the doctrine of res judicata is not applicable to the issue of taxability of real property in a tax year that is different from a tax year involved in a prior adjudication. This is particularly true where, as here, the issue of taxability is use-dependent, and each tax year must be determined on its own merits.

Finally, the Board's third argument, that the Subject Property does not meet the statutory requirements under the FAA, is based upon the erroneous premise that the Subject Property stands on its own for all statutory determinations. On the contrary, the very reason that the Commission ruled in the Judds' favor below is that the Subject Property is operated as a single farming unit, along with the remainder of the Original Property. That being the case, the Board can no more require that the Subject Property separately qualify for FAA assessment than it can

impose such a burden upon an individual acreage component of the Original Property.

ARGUMENT

I. THE COMMISSION'S DECISION MUST BE UPHELD BECAUSE IT IS NOT ARBITRARY OR CAPRICIOUS.

A. The Review Standard Applicable to the Present Action is "Reasonableness and Rationality."

In connection with any consideration of the appropriateness of a decision of a lower court or administrative agency, the initial question that must be addressed is the standard of appellate review. Significantly, the Board fails even to address the standard of review in its brief. The standard applicable to review of formal agency adjudications has existed by statute, within the Utah Administrative Procedures Act ("APA"), since 1988. Utah Code Ann. § 63-46b-17 provides that final agency actions resulting from formal adjudicative proceedings are appealed immediately to Utah's appellate courts. Subsection 4 of that statute (set out in full, supra) provides the only grounds upon which relief may be granted by the appellate courts, including, that "the agency has erroneously interpreted or applied the law," (subsection (4)(d)), and "the agency action is otherwise arbitrary or capricious" (subsection (4)(h)(iv)).

This statute has been interpreted by the Utah courts to continue the existing common law, three-level, standard of review. Thus, pure questions of law are deemed to be equally well suited to judicial and agency expertise and are therefore governed by a "correction of error" standard. See Hurley v. Board of Review of the Industrial Comm. of Utah, 767 P.2d 524, 527 (Utah 1988). In effect, that standard is one of no deference to the agency's decision.

The statute slightly changed the standard applicable to purely factual questions, which are now subject to a test of "substantial evidence." That standard has been deemed satisfied by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Johnson v. Department of Employment Security, 782 P.2d 965, 968 (Utah App. 1989). Significantly, the substantial evidence requirement does not mean that only one conclusion from the evidence is permissible. Hurley, supra, 767, P.2d at 526-27. Moreover, "the party challenging the [factual] findings. . . must marshal all of the evidence supporting the findings and show that despite the supporting facts, the Tax Commission's findings are not supported by substantial evidence." Boston First National Bank of Boston v. County Board of

Equalization of Salt Lake County, 799 P.2d 1163, 1165 (Utah 1990).[2]

The most deferential standard of review is applied to mixed questions of law and fact, which "are often illuminated by an agency's expertise, and special technical knowledge may be of particular help in determining whether the facts fall within the meaning of statutory terms." Hurley, supra, 767 P.2d at 527. Therefore, an agency's "application of law to its factual findings" will not be disturbed "unless its determination exceeds the bounds of reasonableness and rationality." Johnson, supra, 782 P.2d at 968.

The reasonable and rational standard was applicable to determinations of mixed law and fact questions under the common law, even prior to adoption of the APA in Utah. The standard evolves out of the concept that deference should be given to matters that are peculiarly within the scope of agency expertise:

> This Court has consistently held that: Due to the complexity of factors involved in the matter of zoning, as in other fields where courts review the actions of administrative bodies, it should be assumed that

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2 Although respondents' position is that the issues resolved below were neither purely factual nor purely legal, it cannot be said that the evidence presented below fails to meet even the standard. Indeed, the Board does not even attempt to meet the burden of this standard and has neither marshalled the evidence nor attempted to show why that evidence is not sufficient under this standard. Such an omission is fatal to the Board's position, even if it could be said that the Commission's determinations were purely factual.

> those charged with that responsibility (the Board) have specialized knowledge in that field. Accordingly, [administrative agencies] should be allowed a comparatively wide latitude of discretion; and their actions endowed with a presumption of correctness and validity which the courts should not interfere with unless it is shown that there is no reasonable basis to justify the action taken.

Xanthos v. Board of Adjustment of Salt Lake City, 685 P.2d 1032, 1034 (Utah 1984) (quoting, Cottonwood Heights Citizen Association v. Board of Commissioners, 593 P.2d 138, 140 (Utah 1979)).

Applicability of the FAA to real property use constitutes precisely the kind of mixed question of law and fact to which the deferential standard of review is applied:

> An agency's interpretation of key provisions of the statute it is empowered to administer is often inseparable from its application of the rules of law to the basic facts, discussed above. In reviewing decisions such as these, a court should afford great deference to the technical expertise or more extensive experience of the responsible agency.
>
> * * *
>
> The degree of deference extended to the decisions of the Commission on these intermediate types of issues has been given various expressions, but all are variations of the idea that the Commission's decisions must fall within the limits of reasonableness and rationality. As used in this context, the words "arbitrary and capricious" mean no more than this.

Utah Dept. of Admin. Services v. Public Service Commiss., 658 P.2d 601, 610 (Utah 1983). Therefore, the Commission's decision

in favor of FAA assessment of the Subject Property must be affirmed by this Court unless the Board can show that it was arbitrary and capricious. This, the Board has failed to do.

B. The Board has Failed to Establish that the Commission's Decision was Arbitrary and Capricious.

One of the Board's principal arguments, both below and on appeal, is that the Subject Property, standing alone, does not meet the statutory requirements for FAA assessment because it doesn't generate sufficient income and isn't of sufficient acreage. The Board makes no legitimate effort to establish that the Commission's finding that the combined Judd Farm fulfills those standards is not reasonable or rational. Indeed, this Court could take judicial notice of the fact that the combined property exceeds five acres in area. See Appendix 2. Likewise, the testimony below regarding the "agricultural income" of the combined property was essentially undisputed, the Board having focused, instead, on whether there were receipts kept of income generated solely by the Separate Property.

The Board's focus on the Subject Property depends upon two erroneous premises: First, that the Subject Property is separate from the Original Property and, therefore, must be considered on its own (with respect to this argument, see Sections II and III, infra); and, Second, that the 1989 use of the Separate

Property, unlike the use of the Original Property, does not qualify as "agricultural use" under the FAA. Both of these premises were rejected by the Commission. The second premise depends upon the Board's argument that the recording of a subdivision plat map, which includes the Subject Property, and the "improvement" of the Subject Property with curb and gutter, sewer and utility hookups, without respect to actual use, renders the Subject Property non-agricultural. Significantly, there is no statutory support for such a position.[3] Indeed, the FAA itself obviously contemplates that the determination of "agricultural use" depends upon the actual use of the property during the tax year in question, rather than upon any "potential" higher use that the land may have. Thus, Utah Code Ann. § 59-2-502(1) defines "land in agricultural use" as land that is "devoted to the raising of useful plants . . ." or that meets the requirements of "a crop-land retirement program with an agency of the state or federal government."

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[3] In support of this argument, the Board refers the Court to Nevada and Arizona case law. That case law is inapposite, however, since both of those states provide, by statute, that the recording of a subdivision plat on the property renders its use "non-agricultural." Significantly, Utah has no such statute and the Commission, in keeping with this Court's directive that tax laws are interpreted in favor of the taxpayer (See Salt Lake County v. State Tax Commission, infra), decided not to impose such a restriction where it does not exist in the Act.

The "devoted to" language of this section of the FAA has been previously interpreted by this Court in Salt Lake County v. State Tax Commission, 779 P.2d 1131 (Utah 1989). In that case, as in this one, the Commission granted FAA assessment of the taxpayer's property, and its decision was appealed by the Board. The property at issue in that case was owned by Kennecott Corporation and leased to Hercules, Inc. for a buffer zone around its manufacturing plant in Magna. Hercules had subleased the subject property to third parties for grazing and growing wheat. The Board argued that the property was used by Hercules "for industrial purposes" and, therefore, did not qualify as "land in agricultural use."

This Court disagreed with the Board's construction of the FAA, and affirmed the Commission's decision, stating:

> [The Board's] construction would be required if the statute read "exclusively" or even "primarily" devoted to an agricultural use. No such terms appear in the statute, however, and its plain meaning does not require such a construction. In fact, our practice is to construe taxation statutes liberally in favor of the taxpayer, leaving it to the legislature to clarify an intent to be more restrictive if such intent exists. The legislature has determined that if land in Utah is used for agricultural purposes, that land is qualified for assessment under the Act.
>
> We reject the County's argument that the word "devoted" requires exclusive use. Land may be actively devoted to multiple purposes.

779 P.2d at 1132-33 (emphasis added; citations omitted).

The Salt Lake County rationale governs the present case. The Commission found, based upon the evidence presented at the hearing below, that the Subject Property was devoted to agricultural use since the Subject Property was a contiguous part of the Judd Farm and was used for both wheat farming and a federal crop-land retirement program for the relevant years. Both of the uses to which the Subject Property was devoted in the years 1987-89 are specifically qualified as "agricultural use" under the FAA. Pursuant to Salt Lake County, the fact that the Subject Property may have other, potential, uses does not disqualify it from FAA assessment. The uncontroverted evidence established that the Subject Property was not actively used for subdivision purposes (such as home construction, rights of way, etc.) at any time during the relevant time period. Indeed, the Subject Property has only slightly greater potential for such uses than does the Original Property, which the Board does not contend is not "devoted to" agricultural use.

The Commission's finding that the Subject Property is "devoted to agricultural use," within the meaning of the FAA, is fully supported by the evidence and cannot in any way be said to be arbitrary or capricious. Therefore, that finding must be affirmed.

II. THE PRINCIPLE OF RES JUDICATA IS NOT APPLICABLE TO DETERMINATIONS OF TAX LIABILITY IN DIFFERENT TAX YEARS.

The Board contends that the decision of the Third Judicial District Court (Civil No. 87-3472), to the effect that the Subject Property did not qualify for greenbelt assessment under the FAA for the tax year 1985, is "res judicata" in this action. Therefore, the Board argues, the Commission was compelled to rule that the current petition for FAA assessment, which covers tax year 1989, did not satisfy the Act's requirements.

Res judicata precludes relitigation of identical causes of action in subsequent proceedings. Commissioner of Internal Revenue v. Sunnen, 333 U.S. 591, 598 (1947). The related concept of collateral estoppel, which is obviously the principle upon which the Board actually relies, precludes relitigation of issues "which were actually presented and determined in the first suit." Id. In this case, the Commission ruled that "res judicata" was not applicable since the petitions involved different factual issues. That ruling is supported by both the United States and Utah Supreme Courts.

Thus, in Commissioner of Internal Revenue v. Sunnen, supra, the Court considered the issue of whether income from patents should be taxed to an individual taxpayer or to a corporation in which he owned a controlling interest since the taxpayer

had licensed the patent to the corporation. The taxpayer's position was that a previous Board of Tax Appeals decision in his favor on that issue, covering prior tax years, was res judicata in the subject action. The Supreme Court disagreed, finding that tax liability in different tax years typically involves changes in significant facts:

> Income taxes are levied on an annual basis. Each year is the origin of a new liability and of a separate cause of action. Thus if a claim of liability or non-liability relating to the particular tax year is litigated, a judgment on the merits is res judicata as to any subsequent proceeding involving the same claim and the same tax year. But if the later proceeding is concerned with a similar or unlike claim relating to a different tax year, the prior judgment acts as a collateral estoppel only as to those matters in the second proceeding which were actually presented and determined in the first suit.
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> * * *
>
> And so where two cases involve income taxes in different taxable years, collateral estoppel must be used with its limitations carefully in mind so as to avoid injustice. It must be confined to situations where the matter raised in the second suit is identical in all respects with that decided in the first proceeding and where the controlling facts and applicable legal rules remain unchanged.

333 U.S. at 598, 599-600 (emphasis added). In Sunnen, the prior ruling had involved consideration of a different, albeit essentially identical, licensing contract than the one at issue.

Under those circumstances, the Court found it "readily apparent" that collateral estoppel did not apply, and the Tax Court's decision against the taxpayer was affirmed.

The Utah Supreme Court also has considered the principle of res judicata in connection with tax liability, and similarly has held that it is generally not applicable in such cases, stating:

> Generally, in tax litigation, res judicata has no application in a suit challenging the propriety of a tax obligation accrued in tax periods subsequent to those at issue in the original litigation.

Mountain States Tel. & Tel. Co. v. Salt Lake City, 596 P.2d 649, 651 (Utah 1979). In that case, the Court considered the constitutionality of Salt Lake City's franchise fee and utility revenue tax. The tax previously had been upheld on appeal as constitutional. However, the tax had increased from two to eight percent in the interim. The City argued that the prior decision of constitutionality was res judicata.

The Utah Supreme Court disagreed, on the grounds that the tax years in question were different and the commercial situation for telephone suppliers (such as the plaintiff in that case) had changed since the prior decision by virtue of several FCC decisions. Therefore, summary judgment entered by the trial court in the City's favor was reversed.

In the prior related case at issue, the District Court ruled that the Subject Property was not qualified for FAA assessment for tax year 1985 because it was "separated" from the Original Property by virtue of the recording of the subdivision plat map (R.55, ¶ 1), and because the Subject Property, alone, was "not 'actively devoted to agricultural use' in 1985" (Id., ¶ 5, emphasis added). That conclusion was based, rightly or wrongly, on facts that existed in 1985, and the two years prior thereto (See Utah Code Ann. § 59-2-503(1)(d)). Those facts included the transfer of the Subdivision Property to McGhie and the improvement of the property in the early 1980's.

The present case concerns tax liability of the Subject Property in 1989 and involves use of the property some four years after the use that was considered by the District Court. That use was considered by the Commission and determined to qualify the Subject Property for FAA assessment. The Board cannot reasonably contend that the Commission's determination, which the Board has not seriously attempted to show was not supported by substantial evidence, should be replaced by a District Court determination regarding use some four years previous thereto. Such an absurd result is absolutely precluded by the Sunnen and Mountain States decisions.

In any event, a finding by the District Court that the Subject Property was "separated" from the Original Property for the tax year 1985, even if given collateral estoppel effect, would not compel a different result, since there is nothing in the FAA that precludes the addition of property to an already qualified parcel.[4] Utah Code Ann. § 59-2-504 allows the owner of property that qualifies under the definitions of the FAA to apply for FAA assessment of that property at any time. The statutory qualifications are only that the land be "devoted to" agricultural use and have been so devoted for a period of two years. Thus, the relevant consideration is whether the Subject Property was devoted to agricultural use in 1987 through 1989 (a period never considered by the district court, despite the date of its decision), and not whether the Subject Property was "separated" from the Original Property at any time prior thereto.

Thus, whether or not the Subject Property was indeed "separated" from the original property prior to 1987 is

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[4] Indeed, Utah Code Ann. § 59-2-503(1)(a) specifically provides that qualified property need not exceed five acres in area where it is "devoted to agricultural use in conjunction with other eligible acreage . . ."(emphasis added). This provision strongly supports the Judds' position, which was accepted by the Commission, that property can be added to qualified property, even if previously separated. There is nothing in the Act, as the Board implies, requiring an owner of "subdivision" property to affirmatively prove its "withdrawal" from the subdivision. The FAA requires only that the property be "devoted to agricultural use."

irrelevant. The Commission has determined, using its expertise in applying tax law, that the Subject Property need not independently qualify for FAA assessment where it is operated as a single unit with FAA qualified property and is devoted to agricultural use. That decision cannot be said to be arbitrary or capricious.

III. PETITIONER'S THIRD ARGUMENT ERRONEOUSLY PRESUPPOSES THE VALIDITY OF ITS SEPARATION OF PROPERTIES ARGUMENT.

The Board's third argument in its brief is that the Judds failed to establish that the Subject Property qualified for FAA assessment in 1989 since it is not five acres in area and does not generate $1,000 in "agricultural income." This argument depends entirely on the erroneous premise that the Subject Property may only be considered on its own merits, independently of the Original Property. However, that requirement is not warranted by the facts of this case, and presupposes the legitimacy of the Board's argument that the Subject Property was "separate" from the Original Property in 1989.

The evidence below established that there is no physical separation in the Judd Farm, even though some physical separation is allowable under the FAA. See Utah Code Ann. § 59-2-515, granting rulemaking authority to the Commission, and "Assessors Handbook," (Appendix 2 to Appellant's Brief), at 14,

¶ 9, which was promulgated under that authority. On the contrary, the property is fenced as a contiguous unit, and is owned, leased and operated as a single unit. Under these facts, there is no question but that the Judd Farm, if it had never before been assessed under the FAA, would be found to qualify, in its entirety, for such assessment. The fact that the Original Property has always qualified for FAA assessment should not operate to the prejudice of the Judds in obtaining FAA assessment of the Subject Property, nor should the fact that the Subject Property may once have been separated from the Original Property preclude it from ever becoming a part of that property again. Indeed, no such obstacles to FAA assessment can be found in the Act itself.

The Commission's decision in favor of FAA assessment of the Subject Property necessarily determines that the Subject Property need not independently qualify for FAA assessment, whether or not it was once separated from the Original Property, so long as all of the property is operated as a single unit. Such a decision, applying the law to the facts, is not arbitrary or capricious, but is in fact the proper construction of the FAA. Indeed, it would make no more sense to require the separate property to independently meet the FAA requirements than it would to impose the same requirement on any other acreage within the Judd Farm.

CONCLUSION

The Commission's decision that the Subject Property, used in conjunction with the Original Property, qualifies for greenbelt assessment under the FAA is reasonable and rational and supported by the evidence below. Therefore, the Board has failed to meet its burden on appeal, and the Commission's decision must be affirmed by this Court.

DATED this 30th day of September, 1991.

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Appellees Judd

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, four true and correct copies of the foregoing BRIEF OF RESPONDENTS JUDD to the following on this 30th day of September, 1991:

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State Tax Commission

JCA/092591A

APPENDIX 1

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Rec'd 10 May 91
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BEFORE THE UTAH STATE TAX COMMISSION

THOMAS E. & MARY LU E. JUDD, Petitioners,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
v.	)	
COUNTY BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	)	Appeal Nos. 90-0528 to 90-0539 Serial Nos. See Attachment

STATEMENT OF CASE

The above-referenced appeals, having been consolidated for hearing and decision, came before the Tax Commission for formal hearing on October 22, 1990. Alan Hennebold, Presiding Officer, conducted the proceedings for and on behalf of the Tax Commission. Petitioners, Thomas E. Judd and Mary Lu E. Judd, appeared on their own behalf. Bill Thomas Peters appeared on behalf of the Respondent.

Based on the evidence presented during the hearing in this matter, and after consideration of the parties' post hearing memoranda, the Tax Commission makes its:

FINDINGS OF FACT

1. The tax in question is property tax. The Petitioners seek assessment of the subject properties under the Farmland Assessment Act, Utah Code Ann. §59-2-501 et seq.

2. The period in question is January 1, 1989.

3. The subject properties are 12 vacant lots owned by the Petitioners and located in a residential subdivision at approximately 9213 South 3730 West, West Jordan, Utah. Each lot consists of 1/4 acre with curb, gutter and utilities.

4. The Petitioners also own a 29 acre farm (the "Judd farm" hereafter) directly east of the subject properties. The Judd farm has qualified for valuation under the Farmland Assessment Act during all years material hereto.

5. From 1987 through 1989, the subject properties were fenced except on their east side where they adjoined the Judd farm. During those three years, the subject properties and the Judd farm (the "combined properties" hereafter) were operated as a single unit.

6. In 1987, Stanley Diamond rented and grew wheat on the combined properties. After the wheat was harvested, Bateman Farms replaced Diamond as renter. Bateman Farms cultivated the land, then placed it in a crop-land retirement program administered by the federal Department of Agriculture for the 1988 crop year. During the fall of 1988, Bateman Farms planted wheat, then harvested it during the summer of 1989. Afterwards, Bateman Brothers again placed the combined properties in a federal crop-land retirement program for 1990.

5. Neither the Petitioners nor their renters maintained records of the agricultural income derived from the subject properties alone. However, more than $1,000 in gross agricultural income was derived from the combined properties during each year from 1987 through 1989.

6. 1986, the Petitioners sought assessment of the subject properties under the Farmland Assessment Act. The Tax Commission denied their request. Following the Petitioners' further appeal, the Tax Division of Utah's Third Judicial District Court affirmed the denial of Petitioners' request for farmland assessment for the 1986 tax year.

CONCLUSIONS OF LAW

The Utah Farmland Assessment Act, Utah Code Ann. §59-2-501 et seq., permits assessment of land at its value for agricultural use, under the following criteria:

a. The land is not less than five contiguous acres, except where devoted to agricultural use in conjunction with other eligible acres.

b. The land has a gross income from agricultural use, not including rental income, of at least $1000 per year;

c. The land is actively devoted to agricultural use; and

d. The land has been devoted to agricultural use for at least two successive years immediately preceding the tax year in issue.

DECISION AND ORDER

Generally, land is assessed for property tax purposes according to its "highest and best" use. Utah's Farmland Assessment Act provides an exception to the foregoing rule by allowing assessment of land according to its agricultural value, even if some other use might result in a higher value.

Three conditions must be met before land can be assessed under the Farmland Assessment Act. First, the land must be at least five acres in size, or be devoted to agricultural use in conjunction with other eligible acreage. Second, the land must have a gross income from agricultural use, not including rental income, of at least $1,000 per year. Finally, the property must be actively dedicated to agricultural use during the year for which farmland assessment is sought and for two prior years. The Petitioners contend the subject properties meet each of the foregoing conditions.

Regarding the requirement that the land contain at least five acres or be devoted to agricultural use in connection with other eligible acreage, it is undisputed that the subject properties amount to less than five acres even when added together. However, during 1987 through 1989 the subject properties and the remainder of the Judd farm were farmed as one unit. The Judd farm has already been found eligible for assessment under the Farmland Assessment Act. The Tax Commission therefore finds that the subject properties were devoted to agricultural use in connection with other eligible acres, thereby satisfying the first condition for assessment as farmland.

The second requirement is that the properties produce gross income from agricultural use, excluding rental income, of at least $1,000 per year. The Tax Commission notes the Respondent's argument that each of the subject properties must separately meet the $1,000 income requirement. However, in cases where land is combined for agricultural purposes with

...land, the Tax Commission concludes the $1,000 income requirement applies to aggregate value of agricultural production from the combined properties. The Petitioners have established that the combined properties produced more than $1,000 in gross income from agricultural use during each year from 1987 through 1989. The Tax Commission concludes the subject properties meet the Farmland Assessment Act's income test.

Finally, the land must be actively devoted to agricultural use during the year for which farmland valuation is sought, as well as the two preceding years. That the property may have uses in addition to its agricultural use does not prevent the property from qualifying for farmland assessment. Salt Lake County ex rel. County Board of Equalization v. State Tax Commission ex rel. Kennecott Corp., 779 P. 2d 1131 (Utah 1989) The testimony of the Petitioners and their renters establishes that the subject property was either actively devoted to agricultural production from 1987 through 1989 or was included in federal crop reduction programs, which are recognized by the Farmland Assessment Act as being active agricultural use. The Petitioners thereby meet the Farmland Assessment Act's requirement of active agricultural use.

The Respondent argues that prior decisions denying Petitioners' request for farmland assessment for the 1986 tax year are binding with respect to the 1989 tax year as well. Respondent contends that principles of collateral estoppel bar relitigation of the factual issues which were litigated and

resolved in the 1986 case. The Respondent's position is correct as a general principle. However, because the factual basis upon which farmland assessment is based changes from year to year, property not qualifying one year may qualify the next. The interpretation of law is not subject to collateral estoppel in any event. Consequently, the Tax Commission and District Court decisions on the 1986 appeal do not serve as a basis for resolving this 1989 appeal.

As the Petitioners have demonstrated that the subject properties meet each conditions set forth in the Farmland Assessment Act, the Tax Commission concludes that the Petitioners' request for assessment under that Act must be granted for the 1989 tax year. The Salt Lake County Assessor and Auditor are instructed to adjust their records and take such other action as is necessary to implement this decision.

DATED this 8th day of May, 1991.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

R. H. Hansen
Chairman

Roger O. Tew
Commissioner

Joe B. Pacheco
Commissioner

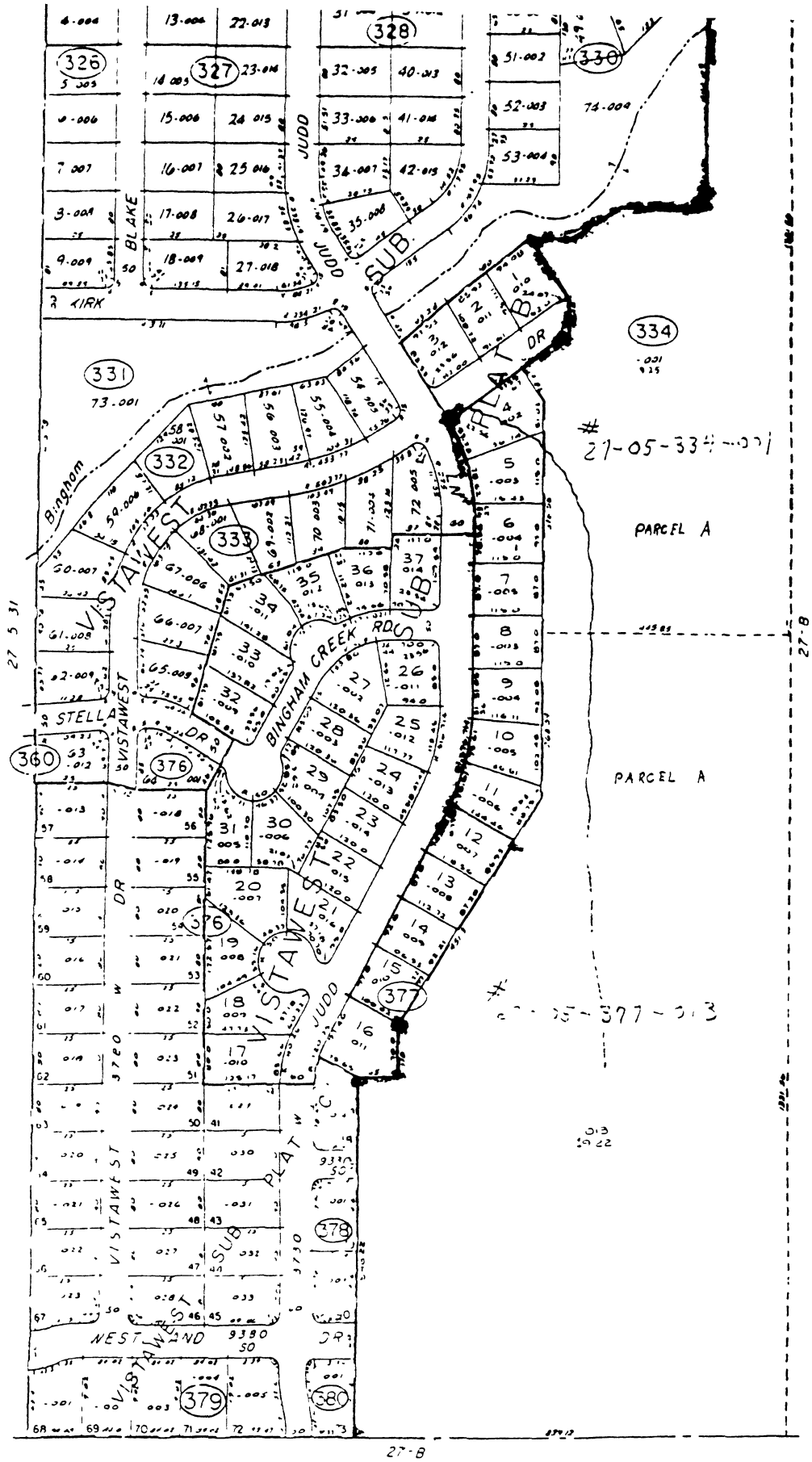
G. Blaine Davis
Commissioner

NOTICE: You have twenty (20) days after the date of the final order to file a request for reconsideration or thirty (30) days after the date of final order to file in Supreme Court a petition for judicial review. Utah Code Ann. §§63-46b-13(3)(a), 63-46b-14(2)(a).

STATE TAX COMMISSION SEAL STATE OF UTAH

AH/jd/1647w

APPENDIX 2



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APPENDIX 3

PART 5

FARMLAND ASSESSMENT ACT

59-2-501. Short title.

This part is known as the 'Farmland Assessment Act" 1987

59-2-502. Definitions.

As used in this part

(1) 'Land in agricultural use' means

(a) land devoted to the raising of useful plants and animals, such as

(i) forages and sod crops,

(ii) grains and feed crops,

(iii) livestock as defined in Section 59-2-102,

(iv) trees and fruits, or

(v) vegetables, nursery, floral, and ornamental stock, or

(b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government

(2) "Roll-back" means the period preceding the withdrawal of the land from the provisions of this part or the change in use of the land, not to exceed five years, during which the land is valued, assessed, and taxed under this part 1988

59-2-503. Qualifications for agricultural use valuation.

(1) For general property tax purposes, the value of land under this part is the value which the land has for agricultural use if the land

(a) is not less than five contiguous acres in area, except where devoted to agricultural use in conjunction with other eligible acreage or as provided under Subsection (3),

(b) has a gross income from agricultural use, not including rental income, of at least $1000 per year,

(c) is actively devoted to agricultural use, and

(d) has been devoted to agricultural use for at least two successive years immediately preceding the tax year in issue

(2) Land which (a) is subject to the privilege tax imposed by Section 59 4-101, (b) is owned by the state or any of its political subdivisions, and (c) meets the requirements of Subsection (1), is eligible for assessment based on its agricultural value

(3) The commission may grant a waiver of the acreage limitation, upon appeal by the owner and submission of proof that 80% or more of the owner's, purchaser s, or lessee s income is derived from agricultural products produced on the property in question

(4) (a) The commission may grant a waiver of the income limitation for the tax year in issue, upon appeal by the owner and submission of proof that the land was valued on the basis of agricultural use for at least two years immediately preceding that tax year, and that the failure to meet the income requirements for that tax year was due to no fault or act of the owner, purchaser, or lessee

(b) As used in this section, "fault" does not include the intentional planting of crops or trees which, because of the maturation period, do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the income requirement

1987

59-2-504. Application requirements — Change in land use or withdrawal.

(1) The owner of land eligible for valuation under this part shall submit an application to the county assessor of the county in which the land is located Applications shall be accepted if filed prior to March 1 of the tax year in which valuation under this part is first requested Any application submitted after January 1 is subject to a $25 late filing fee Filing fees shall be paid to the county treasurer at the time the application is filed All applications filed under this subsection shall be recorded by the county recorder.

(2) Once valuation under this part has been approved, the owner is not required either to file again or give any notice to the county assessor, until a change in the land use occurs Failure of the owner to notify the county assessor and pay the roll-back tax imposed by Section 59-2-506 within 90 days after any change in land use subjects the owner to a penalty of 100% of the roll-back tax due.

(3) Any change in land use or other withdrawal of land from the provisions of this part subjects the land to the roll-back tax whether the change or withdrawal is voluntary or involuntary, unless the change in use or other withdrawal is due to ineligibility resulting solely from amendments to this part.

(4) Land which becomes exempt from taxation under Article XIII, Sec 2, Utah Constitution, is not considered withdrawn from this part if the land continues to be used for agricultural purposes 1987

59-2-505. Indicia of value for agricultural use assessment — Inclusion of fair market value on tax notice.

If valuing land which qualifies as land actively devoted to agricultural use under the test prescribed by Subsection 59-2-503(1), and for which the owner has made a timely application for valuation, assessment, and taxation under this part for the tax year in issue, the assessor shall consider only those indicia of value which the land has for agricultural use as determined by the commission The assessor shall also include the fair market value assessment on the tax notice The county board of equalization shall review the agricultural use value and fair market value assessments each year as provided under Section 59-2-1001. 1987

59-2-506. Rollback tax — Recordation — Lien — Computation of tax — Procedure — Collection — Distribution.

(1) If land which is or has been in agricultural use, and is or has been valued, assessed, and taxed under this part, is applied to a use other than agricultural or is otherwise withdrawn from the provisions of this part, it is subject to an additional tax referred to as the "rollback tax," and the owner shall, within 90 days after the change in land use, notify the county assessor of the change in land use and pay the rollback tax

(2) Upon receipt of the notice, the county assessor shall cause the following statement to be recorded by the county recorder "On (date) this land became subject to the rollback tax imposed by Section 59-2-506 "

(3) The rollback tax is a lien upon the land until paid, and is due and payable at the time of the change in use.

(4) The assessor shall determine the amount of the rollback tax by computing the difference between the tax paid while the land was valued under this part, and that which would have been paid had the property not been valued under this part The county treasurer shall collect the rollback tax and certify to the county recorder that the rollback tax lien on the property has been satisfied

(5) The assessment of the rollback tax imposed by Subsection (1), the attachment of the lien for these taxes, and the right of the owner or other interested party to review any judgment of the county board of equalization affecting the rollback tax, shall be governed by the procedures provided for the assessment and taxation of real property not valued, assessed, and taxed under this part. The rollback tax collected shall be paid into the county treasury and paid by the treasurer to the various taxing units pro rata in accordance with the levies for the current year 1987

59-2-507. Land included as agricultural — Site of farmhouse excluded — Taxation of structures and site of farmhouse.

(1) Land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, and irrigation ditches and like facilities is included in determining the total area of land actively devoted to agricultural use. Land which is under the farmhouse and land used in connection with the farmhouse, is excluded from that determination.

(2) All structures which are located on land in agricultural use, the farmhouse and the land on which the farmhouse is located, and land used in connection with the farmhouse, shall be valued, assessed, and taxed using the same standards, methods, and procedures that apply to other taxable structures and other land in the county. 1987

59-2-508. Application — Consent to audit and review — Purchaser's or lessee's affidavit.

(1) Any application for valuation, assessment, and taxation of land in agricultural use shall be on a form prescribed by the commission, and provided for the use of the applicants by the county assessor The application shall provide for the reporting of information pertinent to this part A certification by the owner that the facts set forth in the application are true may be prescribed by the commission in lieu of a sworn statement to that effect Statements so certified are considered as if made under oath and subject to the same penalties as provided by law for perjury.

(2) All owners applying for participation under this part and all purchasers or lessees signing affidavits under Subsection (3) are considered to have given their consent to field audit and review by both the commission and the county assessor. This consent is a condition to the acceptance of any application or affidavit

(3) Any owner of lands eligible for valuation, assessment, and taxation under this part due to the use of that land by, and the gross income qualifications of, a purchaser or lessee, may qualify those lands by submitting, together with the application under Subsection (1), an affidavit from that purchaser or lessee certifying those facts relative to the use of the land and the purchaser's or lessee's gross income which would be necessary for qualification of those lands under this part 1987

59-2-509. Change of ownership.

Continuance of valuation, assessment, and taxation under this part depends upon continuance of the land in agricultural use and compliance with the other requirements of this part, and not upon continuance in the same owner of title to the land Liability to the roll-back tax attaches when a change in use or

other withdrawal of the land occurs, but not when a change in ownership of the title takes place, if the new owner both (1) continues the land in agricultural use under the conditions prescribed in this part, and (2) files a new application for valuation, assessment, and taxation as provided in Section 59-2 508 1987

59-2-510. Separation of land.

Separation of a part of the land which is being valued, assessed and taxed under this part, either by conveyance or other action of the owner of the land, for a use other than agricultural, subjects the land which is separated to liability for the applicable rollback tax, but does not impair the continuance of agricultural use valuation, assessment, and taxation for the remaining land if it continues to meet the requirements of this part 1987

59-2-511. Acquisition of farmland by government agency — Requirements.

(1) The acquisition by a government agency of land which is being valued, assessed, and taxed under this part, if there is a change in use, subjects the land so acquired to the rollback tax imposed by this part, unless

(a) the land acquisition is by eminent domain,

(b) the land is under the threat or imminence of eminent domain proceedings and the owner of record is notified in writing of the proceedings, or

(c) the land is donated to a governmental entity, but excluding dedications of public rights-of-way

(2) The tax shall be paid by the owner of record before title may pass Prior to payment by the acquiring agency, it shall notify the county assessor of the county in which the property is located of the sale and receive a clearance from the assessor that rollback taxes have been paid or that the property is not subject to the assessment

(3) If land is acquired pursuant to Subsection (1)(a), (b), or (c), the acquiring government agency shall make a one-time in lieu fee payment to the taxing entity entitled to the rollback tax in the amount of the rollback tax due and payable 1990

59-2-512. Land located in more than one county.

Where contiguous land in agricultural use in one ownership is located in more than one county, compliance with the requirements of this part shall be determined on the basis of the total area and income of that land, and not the area or income of land which is located in any particular county 1987

59-2-513. Tax list and duplicate.

The factual details to be shown on the assessors's tax list and duplicate with respect to land which is being valued, assessed, and taxed under this part are the same as those set forth by the assessor with respect to other taxable property in the county 1987

59-2-514. State Farmland Evaluation Advisory Committee — Membership — Duties.

(1) There is created a State Farmland Evaluation Advisory Committee consisting of five members appointed as follows

(a) one member appointed by the commission who shall be chairman of the committee,

(b) one member appointed by the president of Utah State University,

(c) one member appointed by the state Department of Agriculture,

(d) one member appointed by the state County Assessors' Association, and

(e) one member actively engaged in farming or ranching appointed by the other members of the committee

(2) The committee shall meet at the call of the chairman to review the several classifications of land in agricultural use in the various areas of the state and recommend a range of values for each of the classifications based upon productive capabilities of the land when devoted to agricultural uses The recommendations shall be submitted to the commission prior to October 2 of each year 1987

59-2-515. Rules prescribed by commission.

The commission may promulgate rules and prescribe forms necessary to effectuate the purposes of this part 1987